

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. ~~650~~ 18

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, AFL-CIO, LOCAL 283,
PETITIONER,

vs.

RUSSELL SCOFIELD, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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[fol. A] [File endorsement omitted]

[fol. 1]

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

RUSSELL SCOFIELD, LAWRENCE HANSEN,
EMIL STEFANEC, GEORGE KOZBIEL, Petitioners,

—vs.—

NATIONAL LABOR RELATIONS BOARD, Respondent.

**PETITION FOR REVIEW OF FINAL ORDER OF NATIONAL
LABOR RELATIONS BOARD—Filed June 26, 1964**

To the Honorable, the Judges of the United States Court of Appeals for the Seventh Circuit:

Russell Scofield, Lawrence Hansen, Emil Stefanec and George Kozbiel (referred to herein as the Petitioners), are aggrieved by and respectfully petition this honorable Court to review and set aside the order of the National Labor Relations Board (referred to herein as the Board), dated May 18, 1964, denying the motion of the Petitioners for reconsideration of the decision and order of the Board dated January 17, 1964 in proceedings entitled, Local 283, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO (Wisconsin Motor Corporation) and Russell Scofield, an individual, Lawrence Hansen, an individual, Emil Stefanec, an individual, George Kozbiel, an individual, Cases Nos. 13-CB-1059-1 through 4, and in support thereof represent and show that:

[fol. 2]

I

This Court has jurisdiction of the subject matter hereof by virtue of Section 10(f) of the National Labor Relations Act, as amended, 61 Stat. 136 (referred to herein as the Act).

II

The Petitioners are individuals residing in Milwaukee, Wisconsin, and the alleged unfair labor practices which are the subject of this Petition were engaged in at Milwaukee, Wisconsin, within this judicial district.

III

The Petitioners are employees of Wisconsin Motor Corporation and are employed at the manufacturing plant of that company in Milwaukee, Wisconsin. Local 283, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO (referred to herein as the Union), is the certified collective bargaining agent for the production employees at the Milwaukee plant including the Petitioners. In April, 1961, following a trial conducted by the Union, the Petitioners were each fined by the Union for having violated an alleged union rule imposing production quotas or limitations upon the earnings of employees paid on an incentive basis. In October, 1961, the Union brought suit in a state court to recover the amount of the fines thus imposed. These suits are still pending.

IV

Upon charges filed by the Petitioners, the General Counsel for the Board issued an amended consolidated complaint dated December 11, 1961, alleging that the acts of the [fol. 3] Union in fining the Respondents and bringing civil suits for the collection of such fines constituted unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act. After hearing and an intermediate report by a trial examiner the Board delegated its powers in connection with the case to a three-member panel consisting of Frank W. McCulloch, John H. Fanning and Gerald A. Brown. By decision and order dated January 17, 1964, the Board ruled that the action of the Union did not violate Section 8(b)(1)(A) of the Act and the complaint was ordered dismissed.

V

The Petitioners seek the relief requested herein on the following grounds:

1. The Petitioners, in refusing to abide by the alleged union rule limiting the amount they could earn as incentive workers, were exercising the right guaranteed by Section 7 of the Act to refrain from concerted activities. The action of the Union in imposing and attempting to collect financial sanctions against the Petitioners for exercising such a right restrained and coerced them within the meaning of Section 8(b)(1)(A) of the Act and constituted unfair labor practices under the Act.

2. The ruling of the Board and the interpretation of the Act upon which it was based are directly contrary to the decision of this Court in the case of *Allen-Bradley Co. v. NLRB*, 286 Fed. 2d 442 where this Court held that the power of a union to prescribe rules relative to the acquisition and retention of its members "goes beyond any permissible limit when it imposes a sanction upon a member because of his exercise of a right guaranteed by the Act" and that "coercive action whether by way of fine, discharge or otherwise, which deprives a member of his right to work and his employer of the benefit of his services, cannot be said to relate only to the internal affairs of the union".

Wherefore, the Petitioners respectfully request this honorable Court to assume jurisdiction herein and review the aforesaid proceedings and:

- A. Direct the clerk of this Court to certify and serve a copy of this Petition upon the Board;
- B. Direct the Board to certify and file in this Court the transcript of the entire record in the aforesaid proceeding;
- C. Vacate and set aside the decision and order of the Board in the aforesaid proceeding in its entirety and order the Board to enter an order finding that the Union has committed unfair labor practices and granting appropriate relief; and
- D. Grant such other and further relief as may be just and proper.

Signed at Milwaukee, Wisconsin, this 24th day of June, 1964.

Russell Scofield, Lawrence Hansen, Emil Stefanec and George Kozbiel, Petitioners, By Quarles, Herriott & Clemons, Their Attorneys, By John G. Kamps.

John G. Kamps, James Urdan, Quarles, Herriott & Clemons, 411 East Mason Street, Milwaukee, Wisconsin 53202.

[fol. 5] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
No. 14698

RUSSELL SCOFIELD, LAWRENCE HANSEN,
EMIL STEFANEC, GEORGE KOZBIEL, Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW—
Filed August 6, 1964

To the Honorable, the Judges of the United States Court of Appeals for the Seventh Circuit:

Comes now the National Labor Relations Board (herein called the Board) and pursuant to the National Labor Relations Act as amended (61 Stat. 136, 73 Stat. 519, 29 U. S. C. Sec. 151 *et seq.*) files this answer to the petition for review of its Decision and Order dated January 17, 1964, in which an unfair labor practice complaint against Local 283, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO, was dismissed in its entirety (Board Case No. 13-CB-1059).

1. The Board admits the allegations of paragraphs I and II of the petition for review which relate to jurisdiction, venue, and petitioners' standing.

2. The Board admits the allegations of paragraphs III and IV of said petition, except that the Board prays the Court's reference to the certified transcript of the record to be filed herein for a full and exact statement of the pleadings, testimony, evidence, findings of fact, conclusions of law, and order of the Board.

3. The Board denies each and every allegation of paragraph V of said petition.

[fol. 6] 4. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were in all respects valid and proper.

5. Pursuant to Section 10(e) of the Act, the Board will certify and file with this Court the transcript of the entire record in the aforesaid proceeding before the Board.

Wherefore, the Board prays that this honorable Court cause notice of the filing of this answer and transcript to be served upon petitioner, take jurisdiction of the proceedings and the questions to be determined therein, and make and enter thereupon a decree denying all the request for relief contained in the petition for review.

Marcel Mallet-Prevost, Assistant General Counsel,
National Labor Relations Board.

Dated: August 4, 1964.

[fol. 7] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
No. 14698

SCOFIELD, et al., Petitioner,

—vs.—

NATIONAL LABOR RELATIONS BOARD, Respondent.

PETITION TO INTERVENE WITH CONSENT OF ALL PARTIES—
Filed September 15, 1964

Now comes the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, and moves to intervene in this proceeding and in support of said motion states as follows:

1. The Petitioner is the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, a labor union.
2. The Union was a respondent in the proceeding below before the National Labor Relations Board, in which the charges against the Union were ultimately dismissed by the Board. This dismissal is one of the alleged errors sought to be reversed by the Petitioner Scofield, an individual, whose status was that of a charging party below and is as the Petitioner in this Court. As Respondent below, the Union will be directly affected by any decision rendered by this Court and desires to be heard on the merits of the controversy.
3. The Union participated fully in the proceedings before the Board and believes that its own interest and the interests of justice require that it be permitted to participate in this proceeding.
[fol. 8]
4. Counsel for the International Union, United Automobile, Aerospace and Agricultural Implement Workers

of America, AFL-CIO, has spoken with counsel for Petitioner Scofield and Respondent, National Labor Relations Board and can advise that both have consented orally to the allowance of our motion to intervene.

5. No delay will be occasioned since your Petitioner herein will file its brief within the time allotted to the Board under the Court's rules.

Wherefore, your Petitioner prays that leave be given to the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, to intervene in these proceedings or, in the alternative, to permit the filing of a brief by this Petitioner, without prejudice to participation in the oral argument if permission is granted by the panel of Judges which hears the appeal, in accordance with an order entered by this Court in Ramsey v. NLRB, No. 14226, in a parallel situation.

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, By Joseph L. Rauh, Jr., Stephen I. Schlossberg, and Harold A. Katz, their Attorneys.

Joseph L. Rauh, Jr., 1625 K Street, N.W., Washington 6, D.C.

Stephen I. Schlossberg, 8000 East Jefferson Avenue, Detroit, Michigan 48214.

Harold A. Katz, 7 South Dearborn Street, Chicago, Illinois 60603, ANDover 3-6330.

[fol. 9] Affidavit of Service (omitted in printing).

[fol. 10]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Before: Hon. Latham Castle, Circuit Judge.

Petition for review of an order of the National Labor Relations Board.

No. 14698

RUSSELL SCOFIELD, et al., Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent.

ORDER DENYING THE PETITION TO INTERVENE WITH CONSENT
OF ALL PARTIES AND GRANTING MOTION FOR LEAVE TO FILE
BRIEF, ETC.—September 16, 1964

On consideration of the motion of counsel for International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, for leave to intervene in this proceeding or alternatively for other relief, all parties having consented to the said petition,

It Is Hereby Ordered that leave be granted to said petitioner to file a brief in this cause as amicus curiae without leave to participate in the oral argument of this cause.

[fol. 11] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 14698

RUSSELL SCOFIELD, et al., Petitioners,

—vs.—

NATIONAL LABOR RELATIONS BOARD, Respondent.

PETITION FOR RECONSIDERATION BY THE COURT EN BANC OR BY
A DIVISION THEREOF OF ORDER DENYING PETITION TO IN-
TERVENE WITH CONSENT OF ALL PARTIES—Filed October
1, 1964

The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO (Local 283, hereinafter called United Automobile Workers) petitions this Court for reconsideration by the Court, either *en banc* or by a division thereof as provided for in 28 U.S.C. §46, of its *Petition To Intervene With Consent Of All Parties*. The said Petition was denied by the Honorable Latham Castle, Circuit Judge, sitting as motions judge pursuant to Rule 4 of the Rules of this Court. In support of this petition, the United Automobile Workers shows to the Court as follows:

1. The *Petition To Intervene With Consent Of All Parties* was filed on September 16, 1964. A true and correct copy thereof is attached hereto.
2. On September 16, 1964, the Honorable Latham Castle, Circuit Judge, entered an order denying the *Petition To Intervene With Consent Of All Parties* and granting leave to the United Automobile Workers to file a brief as amicus curiae and denying leave to participate in oral argument.
3. This proceeding is before the Court upon the petition of Russell Scofield, et al., to set aside the decision of the

National Labor Relations Board which dismissed a complaint charging the United Automobile Workers with violation of §8(b)(1)(A) of the Labor-Management Relations Act of 1947, as amended, because it had fined certain members for exceeding incentive pay ceilings. In dismissing the complaint, the Board held essentially that the conduct of the United Automobile Workers was not within the scope of §8(b)(1)(A), and in addition, that Congress in enacting the proviso to §8(b)(1)(A) had refrained from regulating internal union affairs, as it had expressly preserved the right of a labor organization "to prescribe its own rules with respect to the acquisition or retention of membership therein . . . "

4. The decision of the Board dismissing the complaint against the Union was issued on January 17, 1964, and on May 18, 1964, the Board denied a motion for reconsideration thereof. The petition for review was filed in this Court on June 26, 1964. The Board's answer thereto was filed on August 6, 1964.

5. Thereafter on September 2, 1964, the Board released its decision in another case in which it appears to have modified or limited its view of the law as expressed in the case below. In *Local 138, International Union of Operating Engineers*, 148 NLRB No. 74, the Board held that a labor organization had violated §8(b)(1)(A) of the Act by fining members who had instituted administrative proceedings with the Board without having first exhausted internal union remedies for their complaints. While the Board's decision in the *Local 138* case expressly reaffirms and distinguishes the decision in the case at bar, *Local 138* nevertheless appears to be a modification by the Board, with respect to the interpretation and application of §8(b)(1)(A) of the Act and the proviso thereto, in cases involving internal union disciplinary action.

6. The petitioner, United Automobile Workers, has great respect for the National Labor Relations Board. The Board, however, in view of this recent decision may no longer be in a position to advocate with undivided heart its decision in favor of the United Automobile Workers in the

case below. The United Automobile Workers, respondent in that case, cannot and should not be compelled to rely [fol. 13] solely upon representation by the Board for protection of the Union's substantial interests herein. The circumstances are such that the United Automobile Workers should be allowed to defend its own position fully as an intervening party. Cf., *Textile Workers Union v. Allendale Co.*, 226 F. 2d 765, 768 (C.A.D.C.). An adverse decision in this Court would seriously affect the United Automobile Workers and its members, and might result in the United Automobile Workers and its members being deprived of substantial rights. The Board does not seek to protect private rights of the United Automobile Workers but only to vindicate public matters. In addition, the United Automobile Workers' internal rules and its general internal procedures will necessarily be involved in this Court's consideration and ultimate decision. The United Automobile Workers is entitled to be heard as of right upon substantial questions in this case which turn upon the interpretation of the internal rules by which it is governed. Many other local unions which are affiliated with the same international union may similarly be seriously affected in their internal government by an adverse decision in this case. Important private interests of the United Automobile Workers and its members are here involved. This is a case where "the enforcement of a public law also demands distinct safeguarding of private interests," which are "not left to the public authorities" solely. Cf., *Missouri-Kansas Pipe Line Co. v. United States*, 312 U.S. 502, 505, quoted in *Textile Workers Union v. Allendale Co.*, 226 F. 2d 765, 768 (C.A.D.C.).

7. The United Automobile Workers should be permitted to intervene as a party herein in order to assure its status to seek review in the Supreme Court of the United States in the event of an adverse decision in this Court.¹ Otherwise, if the Board is not disposed to seek review in the [fol. 14] Supreme Court in the event of an adverse decision

¹ An intervenor has standing to seek Supreme Court review of a decree adverse to its beneficial interest in a Board order. *International Union of Mine, Mill and Smelter Workers v. Eagle Picher Mining and Smelting Co.*, 325 U.S. 335, 338, 339 (1945).

in this Court the United Automobile Workers will be deprived of an opportunity to obtain review of a decision which could involve serious consequences to the United Automobile Workers, including the local union herein and many other local unions as well.

8. The petitioner believes that the issue of the right of a party respondent in a Board proceeding to intervene as a party in review proceedings is of sufficient importance to warrant further review of that question by the Supreme Court of the United States. Before requesting such review, petitioner believes it only appropriate to first move this Court for full consideration *en banc* or by a division thereof of its petition to intervene.

9. We are aware that this Court has in other cases denied leave to intervene. However, in at least one recent case, *Ekco Products Company v. N.L.R.B.*, No. 12166, February 21, 1958, this Court upon reconsideration granted leave to intervene to a labor organization which had been the successful charging party in a case before the Board. In *Ekco* there had occurred a doctrinal shift by the Board following its initial decision under review; and there as here the union seeking intervention sought to protect its constitution and its other interests which were affected. The Court stated as follows:

"The United Steelworkers of America, AFL-CIO, having petitioned for leave to intervene, and having represented that the National Labor Relations Board has, since its decision herein, shifted its position upon an issue which is of great importance to said Steelworkers in the case at bar, and generally, whenever that organization has representation contracts; and having further represented that an interpretation of the Constitution of the Steelworkers organization is likewise in issue in the case at bar

"IT IS ORDERED that leave be granted to the United Steelworkers of America, AFL-CIO to intervene herein and to file its brief on or before ten (10) days from the date of this order, sending copies to the other parties herein."

The reasoning of this Court in *Ekco* in granting intervention to the charging party applies with at least equal if not greater force to this petitioner, which should not be left as a respondent with no opportunity to defend. A true and correct copy of this Court's order in *Ekco* is attached hereto.

[fol. 15] Wherefore, it is urged that this Court reconsider the *Petition To Intervene With Consent Of All Parties*, *en banc*, or by a division thereof, and grant said Petition.² If the *Petition* is granted, the petitioner will promptly file its brief as intervenor so that there will be no delay of the proceedings in this Court.

Respectfully submitted,

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO (Local 283), By Joseph L. Rauh, Jr., Stephen I. Schlossberg, Harold A. Katz, Irving M. Friedman, Its Attorneys.

Joseph L. Rauh, Jr., 1625 K Street, N.W., Washington 6, D.C.

Stephen I. Schlossberg, 8000 East Jefferson Avenue, Detroit, Michigan 48214.

Harold A. Katz, Irving M. Friedman, 7 South Dearborn Street, Chicago, Illinois 60603, ANDover 3-6330.

[fol. 16] Certificate of Service (omitted in printing).

[fol. 17] CLERK'S NOTE

Attachment to Petition for reconsideration etc. "Petition to intervene with consent of all parties" is omitted from the record here as it appears at side folio 7, *supra*.

² Counsel for the Board has authorized us to state that as a matter of policy, the Board does not oppose intervention by the party which was a respondent before the Board, in any review proceedings in courts of appeals.

[fol. 19]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

Before: Hon. F. Ryan Duffy, Chief Judge, Hon. W. Lynn Parkinson, Circuit Judge.

Pet. for Rev. of an order of N.L.R.B.

No. 12166

EKCO PRODUCTS COMPANY, Petitioner

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent.

ATTACHMENT TO PETITION FOR RECONSIDERATION, ETC.—

February 21, 1958

The United Steelworkers of America, AFL-CIO, having petitioned for leave to intervene, and having represented that the National Labor Relations Board has, since its decision herein, shifted its position upon an issue which is of great importance to said Steelworkers in the case at bar, and generally, whenever that organization has representation contracts; and having further represented that an interpretation of the Constitution of the Steelworkers organization is likewise in issue in the case at bar

It Is Ordered that leave be granted to the United Steelworkers of America, AFL-CIO to intervene herein and to file its brief on or before ten (10) days from the date of this order, sending copies to the other parties herein.

[fol. 20]

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

Before: Hon. John S. Hastings, Chief Judge, Hon. Win G. Knoch, Circuit Judge, Hon. Latham Castle, Circuit Judge.

Petition for review of an order of the National Labor Relations Board.

No. 14698

RUSSELL SCOFIELD, et al., Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent.

ORDER DENYING PETITION FOR RECONSIDERATION—

October 6, 1964

On consideration of the petition of the respondent in the above entitled proceeding, The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO (Local 283), for reconsideration by the Court, either *en banc* or by a division thereof, of the order of this Court entered September 16, 1964, denying said respondent's petition to intervene in said proceeding;

It Is Hereby Ordered that the petition for reconsideration be and is hereby Denied.

[fol. 21] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 22]

SUPREME COURT OF THE UNITED STATES
No. 650—October Term, 1964.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO (LOCAL 283), Petitioner,

vs.

RUSSELL SCOFIELD, et al.

ORDER ALLOWING CERTIORARI—January 18, 1965

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.